

relevant issues of fact to the assessors while leaving him a discretion as to which particular issues of fact he will so put.

Where a power is conferred upon an authority to do something which is designed to give effect to the purpose of a statute then even if the empowering words are drafted in such a way as apparently to confer a discretion they must be construed as imposing a duty if failure to exercise the power would defeat the objects of the legislation. One simple example will serve to illustrate this. Under section 4(2) of the Post Office Ordinance, 1947, the Postmaster-General may establish post offices at such places as he thinks fit. If the Postmaster-General, treating this provision as giving him a discretion, decided to establish no post offices at all one of the principal objects of the Ordinance would be frustrated and therefore the empowering words though apparently conferring a discretion must be understood to impose a duty.

In my opinion, the wording of section 198 puts the matter beyond any doubt. The opening words of the section are:—

"After having recorded and considered the opinions of the assessors, the Court shall give judgment"

The plain meaning of these words is that the Court must record and consider the opinions of the assessors before giving judgment. The Court cannot disregard this requirement however uncomplicated the issues in the case may be for it is expressed in terms which make the recording of the assessors' opinions a condition precedent to the delivery of the judgment.

For these reasons I agree that the appeal should be allowed and I would order a re-trial upon the charge.

Syed Sheh Barakbah J.:—I have had the advantage of reading the judgments of the learned President and Good J. in this appeal. I entirely agree with their conclusions and have nothing to add.

Appeal allowed.

Solicitors: S. Seenivasagam & Sons.

TAN KAY TECK & ANOR.
v. THE ATTORNEY-GENERAL

[O. Cr. J. (Whyatt C.J.) July 10, 1957]

[Singapore—Crown Suit No. 7 of 1957]

False imprisonment—Wrongful arrest—Detention—Damages—Criminal Procedure Code (Cap. 132), s. 31—"Reasonable complaint"—Arrest without warrant—Extent of police officer's authority—Reason for arresting—Prisoner informed—Onus.

Bail—Persons released—Re-arrest.

The petitioners in this case claimed damages from the Crown for false imprisonment, alleging that they were wrongfully arrested and detained by an Asst. Superintendent of Police on March 22, 1954.

The facts were briefly as follows: On the night of March 22, 1954 the petitioners, husband and wife, retired to bed at about 10.00 p.m. but shortly before midnight they were woken up and arrested. The first petitioner was able to put on a few day clothes, but his wife, who was five months pregnant, was not and she went to the police station wearing her night pyjamas. They were kept at the police station from midnight until 5.00 a.m. before being released on police bail. Later that morning they appeared before the Magistrate and were charged under section 347 of the Penal Code with having wrongfully confined one Ng Yow Jick at their house on March 17 with intent to extort property from him. After that they were once again released on bail but were re-arrested outside the courtroom and taken to the Criminal Investigation Department to be fingerprinted before being allowed to go home. They came before the Magistrate again on March 30 and were remanded on bail until April 13 but when the case came up on that date, the prosecution offered no evidence and they were released.

Held: (1) a police officer is entitled to arrest a person without warrant if he has received a reasonable complaint that such person has been concerned in an offence under section 347 of the Penal Code. In this case no reasonable complaint was made against the petitioners within the meaning of section 31 of the Criminal Procedure Code and therefore their arrest without warrant and their subsequent detention was unlawful;

(2) as the petitioners had been released by the Magistrate on bail, the police had no authority to take them into custody again in order to convey them to the Criminal Investigation Department for finger printing; their action, in effect, amounted to a second false imprisonment;

(3) a false imprisonment does not merely affect a man's liberty, it also affects his reputation. Where a person has been wrongfully arrested and detained, it is in the public interest that sufficient damages should be awarded in order to give reality to the protection afforded by law to personal freedom.

Damages for \$1,000.00 to each petitioner allowed with costs.

The word "complaint" in section 31 of the Criminal Procedure Code means a complaint to a police officer.

Cases referred to:—

- (1) *Tims v. John Lewis & Co.* (1951) 2 K.B. 459, 472.
- (2) *Christie v. Leachinsky* (1947) A.C. 573.
- (3) *Dumbell v. Roberts* (1944) 1 All E.R. 329.
- (4) *Walter v. Alltools Ltd.* 61 T.L.R. 39.

CLAIM FOR DAMAGES for Wrongful Imprisonment.

K. Seth (N. A. Christopher with him) for the petitioners/plaintiffs.

A. V. Winslow (Senior Crown Counsel) for the defendant.

Whyatt C.J.:—In this case the first petitioner, Tan Kay Teck, and his wife, Chia Bee Sim, the second petitioner, claim damages from the Crown for false imprisonment, alleging that they were wrongfully arrested and detained by Assistant Superintendent of Police, Bryan Jones, on the 22nd March 1954.

The petitioner is a building contractor and he resides with his wife at 17 St. Michael's Road, Singapore. On the night of the 22nd March they retired to bed at about 10.00 p.m. but shortly before

midnight they were woken up by a knocking on the bedroom door. The plaintiff got up and opened the door and saw, standing outside in the passage way, Assistant Superintendent Jones and a Chinese and a Malay detective, all of them in plain clothes, and a maidservant and two other inmates of the house. Jones was the first to speak. He asked the petitioner in English if he was Tan Kay Teck and the petitioner who understands only a little English, replied in Malay that he was. Jones then asked where his wife was and the petitioner pointed to her, standing beside him at the bedroom door. Jones informed them that he was a police officer and asked the petitioner and his wife to come with him to the police station. Before they left, Jones spoke to a man named Lim Ban Seng who was occupying a room on the floor above and asked him also to come to the police station. The petitioner, his wife and Lim Ban Seng were then taken in a police Jeep to Kandang Kerbau Police Station which is about a mile away from 17 St. Michael's Road. On arrival at the Police Station, Jones took statements from the petitioner and his wife and eventually released them on bail at 5.00 a.m., telling them that they must appear at the Magistrates' Court at 10.00 a.m. later that morning. The petitioners duly appeared before the Magistrate and were charged under section 347 of the Penal Code with having wrongfully confined a person named Ng Yow Jick at 17 St. Michael's Road on the 17th March with intent to extort property from him. They were remanded on bail until the 30th March but after they had provided the necessary bail, instead of being released, they were taken to the Criminal Investigation Department for photographing and fingerprinting before being allowed to go home. They came before the Magistrate again on the 30th March and were remanded on bail until the 13th April but when the case came up on that date, the prosecution offered no evidence and they were discharged. They subsequently consulted their solicitors who wrote to the Attorney-General on the 14th May claiming damages for wrongful arrest. The Attorney-General replied on the 18th May, denying liability and after further correspondence, the present proceedings were instituted under the Crown Suits Ordinance on the 10th March 1955.

The questions which arise for decision on these facts are first, the extent of a police officer's authority to arrest without warrant a person whom he suspects of having committed an offence under section 347 of the Penal Code, and secondly, whether, on the facts of this case, Assistant Superintendent Jones was acting within that authority when he arrested and detained the petitioners.

The answer to the first question depends on the construction of section 31 of the Criminal Procedure Code, the relevant provisions of which are as follows:—

"Any police officer may without a warrant arrest any person against whom a reasonable complaint has been made of having been concerned (in a seizable offence.)"

An offence under section 347 of the Penal Code of confining a person for the purpose of extorting property from him is a seizable offence and therefore it is clear that a police officer may arrest without warrant any person against whom a reasonable complaint is made that he has been concerned in this offence. It was pointed out in the course of the argument that according to the interpretation section of the Criminal Procedure Code, complaint means a complaint to a Magistrate but as the interpretation section itself provides, this meaning does not apply if it is repugnant to the context and in my view, it is plain that in the context of section 31, complaint means a complaint to a police officer. Apparently the defendant also took this view when he filed his Answer to the Petition, since paragraph 7 reads: "The defendant avers that the two Petitioners were lawfully arrested as a result of a complaint under section 347 of the Penal Code". Strictly speaking this plea, as it stands, is demurrable as it does not allege that the complaint was a reasonable complaint but as no objection was taken by the petitioners on this ground. I make no further reference to this point. The essence of the matter is that a police officer is entitled to arrest a person without warrant if he has received a reasonable complaint that such person has been concerned in an offence under section 347 of the Penal Code.

I, therefore, turn now to consider the second question, namely, whether, on the facts of this case, it can be said that a reasonable complaint was made to Jones that these petitioners had been concerned in the offence of wrongfully confining a person for the purpose of extorting property from him. It was contended on behalf of the petitioners that in determining whether a complaint is reasonable, an objective and not a subjective test should be applied and this contention is in my opinion clearly sound. As Lord Goddard observed in *Tims v. John Lewis & Co.*⁽¹⁾ "The question whether there was a reasonable or probable cause is not, I think, to be determined subjectively, as has been suggested. It is a question which objectively the Court has to decide on the evidence before it." Lord Goddard was speaking in that case of the reasonable or probable cause required at common law to justify an arrest without warrant of a person suspected of felony but the subject is *in pari materia* with arrest under statutory powers upon a reasonable complaint and in my view the same principles apply.

It follows that in order to determine the question whether this arrest was made upon a reasonable complaint, the Court must first ascertain what were the facts known to Jones and then decide whether those facts amounted to a reasonable complaint that the petitioner and his wife had wrongfully confined a person for the purpose of extorting property from him. The first information which Jones received on this matter was conveyed to him on the 19th March at Kandang Kerbau Police Station. At about 9.15 p.m. a young man named Ng Yow Jick entered the station and spoke to Jones who was the Investigating Officer on duty at that time. He told him he was a building sub-contractor and that he had recently carried out some carpentry work on sub-contract for a contractor named Tan Kay Teck, the first petitioner in this suit. As a result, he was owed about \$5,000 but the contractor refused to pay and there was an action pending in the High Court. The sub-contractor then went on to say that two days previously he had been asked by the contractor to go to his house at 17 St. Michael's Road to settle the dispute. He had arrived at the house at about 3 p.m. and had been received in a friendly manner by the contractor and invited to have some coffee. He was shown into a sitting room where there were two other men and the contractor's wife and told to sit down at a table. The contractor's wife then locked the two doors of the room and a discussion followed about the money which the sub-contractor said the contractor owed him. The contractor asked him if he had received the money and the other persons present stood around in a menacing manner. The contractor banged the table and told the sub-contractor to speak up. The sub-contractor did so; he said he had not received the money. The contractor thereupon offered to pay the sub-contractor \$1,000 but this was not accepted. The contractor then let the sub-contractor go, taking him in his own car as far as the bus stop.

Such was the story told to Jones on the 19th March. It was a story of a discussion between a building contractor and his sub-contractor about a business debt during the course of which the argument became somewhat heated and the contractor banged the table while other persons in the room stood around in a menacing manner. The doors of the room were locked but whether this was done to ensure privacy or to prevent the sub-contractor leaving during the discussion does not clearly appear. One thing, however, does clearly emerge from the story; that the meeting at 17 St. Michael's Road began and ended in a friendly atmosphere with the contractor driving the sub-contractor in his car to the bus stop.

Moreover it is very significant that when the sub-contractor made his report, he did not apparently consider that he had been the victim of a criminal offence. On the contrary, he made it abundantly clear to Jones that he was making a report because he had heard that the contractor had recorded the discussion about the debt on a tape-recorder and he was afraid he might use it in evidence against him in the High Court proceedings. In other words his complaint to Jones was not that the contractor had wrongfully confined him for the purpose of extorting property from him but that the contractor had secretly recorded evidence which might jeopardise his prospects of success in the pending civil proceedings. His concern was with the civil law, not the criminal law, and with that touching simplicity which attributes omniscience to the members of the police force, he brought his worry to Kandang Kerbau Police Station in the hope that somehow or other the police would be able to find an answer to his problem. He should have been told that the police were not concerned with the merits of his dispute with the contractor as that was a civil matter nor with the question whether the evidence recorded on the tape-recorder could be used in the pending proceedings as that too was a matter for the civil courts. But instead of telling him this, Jones, possibly because he was not at that time very experienced—he had not been long out of the Police Training School—sought to discover in the sub-contractor's story some ground for alleging that the sub-contractor had been wrongfully confined by the contractor and his wife in the sitting room of 17 St. Michael's Road on the afternoon of the 17th March for the purpose of extorting property from him. What property the contractor was supposed to be trying to extort from the sub-contractor has never been explained by Jones or any one else. In point of fact, the position was rather the other way about; it was the sub-contractor who was trying, I will not say to extort, but to extract, property from the contractor in the form of a sum of \$4,595. The plain truth is that the complaint made by the sub-contractor to Jones on the 19th March was never intended and could never have supported a criminal charge under section 347 of the Penal Code against the contractor and his wife, and it is not surprising that after two remands the prosecution was eventually abandoned. In my judgment no reasonable complaint was made against the petitioners within the meaning of section 31 of the Criminal Procedure Code and therefore their arrest without warrant on the 22nd March and their subsequent detention was unlawful.

There are two subsidiary matters which can be dealt with more shortly. The first is whether Jones informed the petitioners of the reason for their arrest

when he took them into custody; if he did not do so, then it is clear law, on the authority of *Christie v. Leachinsky*⁽²⁾, that the arrests cannot, on any view of the facts, be justified. On this point there is unfortunately a serious conflict of evidence. Jones stated that he told the first petitioner in English why he was being arrested but said very candidly that he could not remember whether he also told the second petitioner. The first petitioner, on the other hand, says he inquired in Malay why he was being arrested and was told by Jones in English not to ask too much but to follow him and he adds that a Malay detective spoke to him in Malay to the same effect. I agree with counsel for the defendant that the fact that Jones said that he informed the first petitioner but admitted he could not remember whether he also spoke to the second petitioner is a strong indication that this witness was trying, to the best of his recollection, to give the Court a true account of what occurred. But the petitioners were both quite definite that they were not told and did not know why they had been arrested until they got to the police station. On the face of it, the testimony of these witnesses appears to be irreconcilable but it must be remembered that there were serious difficulties of language on both sides and it may well be that each party assumed too readily that his meaning was being conveyed adequately to the other and that, as a result, there was misapprehension and misunderstanding between them. The onus, however, is on the defendant to prove that the petitioners were informed of the reason for their arrest or at least that all reasonable steps were taken to convey the reason to them at the time of their arrest, and in my opinion the defendant has not discharged it.

The second subsidiary matter relates to the photographing and fingerprinting of the petitioners at the Criminal Investigation Department on the morning of the 23rd March. The petitioners had been released by the Magistrate on bail earlier that morning and the police had no authority to take them into custody again in order to convey them to the Criminal Investigation Department for fingerprinting; their action, in effect, amounted to a second false imprisonment. It is right that I should add that counsel for the defendant did not seek to justify the action of the police in this particular matter.

It remains to consider the question of damages. It was pointed out by Scott L.J. in *Dumbell v. Roberts*⁽³⁾ that where a person has been wrongfully arrested and detained, it is in the public interest that sufficient damages should be awarded in order to give reality to the protection afforded by the law to personal freedom. Furthermore as Lawrence L.J. observed in *Walter v. Alltools Ltd.*⁽⁴⁾, a false imprisonment does not merely

affect a man's liberty; it also affect his reputation. Moreover in the present case there are aggravating circumstances. The petitioners were woken up and arrested in the middle of the night. The first petitioner was able to put on a few day clothes but his wife, who was five months pregnant, was not and she went to the police station wearing her night pyjamas. They were kept at the police station from midnight until 5.00 a.m. before being released on police bail. Later that morning after appearing before the Magistrate, they were again released on bail but were re-arrested outside the courtroom and taken to the Criminal Investigation Department to be fingerprinted and as Scott L.J. remarked in the case to which I have referred, fingerprinting which is the consequence of an unjustifiable arrest may be an element in the assessment of damages. Taking all these various matters into account, I am of the opinion that a reasonable amount to award as damages in this case is \$1,000 to the first petitioner and a like sum to his wife, the second petitioner. Accordingly there will be judgment for each of the petitioners for \$1,000 with costs.

Order accordingly.

Solicitors: *Christopher & Francis.*

**Re M. S. E. ANGULLIA, DECD.
BRITISH MALAYA TRUSTEE & EXECUTOR
CO. LTD. & ORS. v. ATTORNEY-GENERAL.**

[O. C. J. (Whyatt C.J.) July 3, 1957]

[Singapore — Originating Summons No. 48 of 1957]

Will — Charitable trust — Trust to be performed in a foreign jurisdiction — Whether direction in Will has become impossible or impracticable.

By his Will the testator bequeathed the income of certain property in Singapore to trustees to be expended in charity. He directed that 25% of the income be sent to Mecca and there expended in charity in such manner as the trustees might think expedient; 25% to be sent to Medina for the same purpose and 10% to be sent to Baghdad for the same purpose. The trustees sought the directions of the Court as to the future application of the income of the charity so far as it relates to distribution in Mecca, Medina and Baghdad. It was argued for the trustees that the trust had become impossible or impracticable because (a) the testator had omitted to appoint trustees in Mecca, Medina and Baghdad and to state the object of his charity in these places and therefore the trustees in Singapore were not able to see to the proper application of the trust moneys, and (b) that it was difficult to remit money to Mecca and Medina.

Held: (1) the fact that the gift in this case was for charity generally without any indication of the objects does not make it invalid for uncertainty and the Crown may appoint the objects of the charity by means of a scheme;

(2) the trustees had not shown that it was impossible or impracticable to carry the original trust into effect;